

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

CHAPTER 11

IN RE:
W.R. GRACE & CO., et al.,
Debtors.

Case No. 01-1139 (JFK)
Jointly Administered

DEPOSITION OF
Professor James B. Shein
May 14, 2009
Chicago, Illinois
Lead: Peter Van N. Lockwood, Esquire
Firm: Caplin & Drysdale, Chartered

FINAL COPY
JANE ROSE REPORTING 1-800-825-3341

<p style="text-align: right;">Page 14</p> <p>1 Q. You've been teaching at Kellogg since 2 2002, correct? 3 A. That's right.</p> <p>4 Q. And then before that you taught at Loyola 5 from 1994 to 2001? 6 A. That's correct.</p> <p>7 Q. It indicates under the Loyola entry that 8 you taught both in the graduate school of business 9 and in the school of law; is that correct? 10 A. That's correct.</p> <p>11 Q. And in the school of law the courses you 12 indicate that you taught were, quote, Business 13 Concepts For Lawyers, closed quote, and, quote, 14 New Venture Creation, closed quote.</p> <p>15 Could you describe for us just sort of 16 generally what those two courses were? 17 A. Yes, those courses were the business 18 concepts where lawyers took them through the main 19 aspects of business. 20 In other words, the goal was to teach 21 business concepts to people who were about to go 22 and advise businessmen, and so we took them 23 through marketing concepts, finance, things like 24 that.</p> <p>25 Q. Was corporation law encompassed within</p>	<p style="text-align: right;">Page 16</p> <p>1 resume, the summary in the fourth bullet point, it 2 states, quote: 3 Deemed and, subquote, expert on corporate 4 governance, subquote, by a federal court, closed 5 quote.</p> <p>6 Could you tell us, sir, what that refers 7 to?</p> <p>8 A. That refers to something that a judge said 9 in a case in California where a number of expert 10 reports were presented to the Court, and the judge 11 went through and said:</p> <p>12 This one's not an expert, this one isn't 13 an expert, this one is, and then when she got to 14 Shein, she said:</p> <p>15 This one is an expert on governance.</p> <p>16 Q. And what was that case?</p> <p>17 A. Thorpe.</p> <p>18 Q. Thorpe Insulation?</p> <p>19 A. Yes.</p> <p>20 Q. And did you in fact testify in that case?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. Because I was stopped from testifying by 24 an objection that the insurance carriers who had 25 submitted these expert reports didn't have</p>
<p style="text-align: right;">Page 15</p> <p>1 that course or? 2 A. No.</p> <p>3 Q. And what about new venture creation? 4 A. That's where I actually had the students 5 put together business plans for a new business 6 idea, and it was solely devoted to the business 7 aspect, not the legal aspect.</p> <p>8 Q. Now, during the time that you have been 9 teaching at first Loyola and then Kellogg, your 10 resume indicates that you also from 1997 to the 11 present have been counsel to McDermott, Will & 12 Emery here in Chicago; is that correct? 13 A. That's correct.</p> <p>14 Q. And in your capacity as counsel at that 15 firm, would you regard yourself as practicing law 16 or advising lawyers on business matters such as 17 the ones you described yourself teaching? 18 A. More the latter.</p> <p>19 Q. And while you've been at McDermott, Will & 20 Emery, and I don't want to get into anything 21 confidential here, but just as sort of a broad 22 question, have you participated in the firm's 23 representation of Honeywell? 24 A. No.</p> <p>25 Q. Turning back to the first page of your</p>	<p style="text-align: right;">Page 17</p> <p>1 standing in the case.</p> <p>2 Q. And the Court agreed with that objection?</p> <p>3 A. Yes.</p> <p>4 Q. Or sustained it I guess.</p> <p>5 A. Or sustained.</p> <p>6 Q. Okay. And is that the only time that you 7 could have testified or sought to testify in a 8 court?</p> <p>9 A. No.</p> <p>10 Q. Within the last four years have you 11 testified in other court proceedings?</p> <p>12 A. No.</p> <p>13 Q. How extensively I guess prior to the last 14 four years have you testified in court?</p> <p>15 A. I think three times in my career.</p> <p>16 Q. And are you able to give a general 17 description of in what capacity you testified 18 those three times or do you need to do it one by 19 one?</p> <p>20 A. Two times was in my capacity as CEO of a 21 company, one of which was the fact that a customer 22 didn't pay us, and the other one was a few weeks 23 after I arrived at a company it went into 24 bankruptcy, and, of course, I was deposed as well 25 as testifying in court as to the company and its</p>

<p>Page 30</p> <p>1 BY MR. LOCKWOOD:</p> <p>2 Q. And as part of your background and 3 experience in which you just testified about your 4 belief of what the trustees would or wouldn't do, 5 do you know anything about how the various trusts 6 with these kind of provisions in them have in fact 7 operated over the years?</p> <p>8 A. No.</p> <p>9 Q. So your opinion in this matter is based on 10 some judgment by you of human behavior?</p> <p>11 A. That's part of it.</p> <p>12 Q. And what's the rest of it?</p> <p>13 A. That this thing is designed with what I 14 would describe as perverse incentives to not treat 15 everybody equally.</p> <p>16 Q. And just to be complete about this 17 particular topic that we are talking about, I take 18 it you also have read Section 7.13 of the Trust 19 agreement which is referred to in Section 20 5.7(b)(3)?</p> <p>21 MR. GIANNOTTO: What page is that?</p> <p>22 MR. LOCKWOOD: It's on page 46.</p> <p>23 MR. GIANNOTTO: Thank you.</p> <p>24 THE WITNESS: Yes.</p> <p>25 BY MR. LOCKWOOD:</p>	<p>Page 32</p> <p>1 statement, quote:</p> <p>2 The choice of certain claimants' outside 3 counsel as TAC members will create incentives for 4 unfair and unequal treatment, closed quote.</p> <p>5 Are the incentives that you refer to there 6 spelled out in subsequent portions of your report?</p> <p>7 A. I believe so.</p> <p>8 Q. In paragraph 13 of your report you start 9 out by saying, quote:</p> <p>10 Based upon my review of the Bankruptcy 11 Rule 2019 statements filed by the proposed members 12 of the TAC or their law firms attached as Appendix 13 B, you understand various things.</p> <p>14 Could you tell us generally what the scope 15 of your review of the bankruptcy 2019 statements 16 was that you refer to in that language?</p> <p>17 A. I wasn't looking at the bankruptcy rule 18 itself, the purpose of doing that.</p> <p>19 My purpose of doing that was I asked 20 Mr. Giannotto in fact, I said:</p> <p>21 I'm going through here understanding that 22 the people who are involved in this are also 23 plaintiffs' counsel for quite a few asbestos 24 litigants.</p> <p>25 I said:</p>
<p>Page 31</p> <p>1 Q. And that provides specifically, does it 2 not, for dispute resolution of disputes that could 3 arise as a result of the consent provisions set 4 forth in Section 5.7(b) in the case of the TAC of 5 this trust agreement?</p> <p>6 A. It does have that.</p> <p>7 Q. So if I understand you correctly, you're 8 basically of the view that 5.7(b)(2) and (3) and 9 7.13 are in effect window dressing.</p> <p>10 A. That's a good description.</p> <p>11 Q. And, as I said earlier, you're aware of no 12 instances in which any trustees have ever invoked 13 similar provisions in similar trust agreements to 14 actually compel TACs to agree to things that they 15 didn't want to agree to.</p> <p>16 A. Not in asbestos cases, no.</p> <p>17 Q. And just to be absolutely sure, you're 18 unaware of that because you've made no effort to 19 learn anything about it, inquire into it or 20 otherwise become knowledgeable about it.</p> <p>21 A. No, because -- the answer's no.</p> <p>22 Q. Moving to paragraph 11?</p> <p>23 A. Of which --</p> <p>24 Q. Of your report.</p> <p>25 At the end of that you make the general</p>	<p>Page 33</p> <p>1 How do I know that? And so he sent me the 2 2019 statements to answer that question.</p> <p>3 Q. And just so the record is clear on this, 4 the 2019 statements that you referred to are 5 listed in Exhibit B to your expert report in 6 paragraphs 4, 5, 6 and 7; is that correct?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. And you were able to identify the law 9 firms referenced in those four paragraphs as being 10 the proposed members of the TAC by looking at the 11 last page of the Trust agreement which is Exhibit 12 2 to the exhibit book.</p> <p>13 A. Where are you?</p> <p>14 Q. The last page -- right there to your left. 15 Is that how you identified those four law 16 firms as being the proposed TAC?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, when you looked at those 2019 19 statements, what exactly did you look for? And by 20 that I meant did you look to see how many 21 claimants each one of the law firms represented 22 that were set forth in the 2019 statements?</p> <p>23 A. Basically.</p> <p>24 Q. Did you do anything more such as trying to 25 identify what kind of claims those claimants were</p>

<p style="text-align: right;">Page 38</p> <p>1 You can answer. 2 THE WITNESS: Right. I don't purport to 3 be a legal expert on this. 4 BY MR. LOCKWOOD: 5 Q. Well, you are an expert on corporate governance, right? 6 A. Okay. 7 Q. And in that capacity -- well, strike that. 8 You also purport to be an expert on 9 governance of trusts if I understand it; is that 10 correct? 11 A. Yes. 12 Q. Is it your opinion that as a matter of 13 either corporate or trust law there is something 14 improper about trying to limit -- well, let me 15 back up. I'm getting ahead of myself. 16 We have three categories of trust 17 fiduciaries in this Trust, don't we? Trustees, 18 the TAC and the futures representative. 19 A. Yes. 20 Q. The trustees have fiduciary obligations to 21 everybody, correct? 22 A. Correct. 23 Q. I mean all the Trust beneficiaries, 24 correct?</p>	<p style="text-align: right;">Page 40</p> <p>1 that, the TAC would have a fiduciary duty to 2 future claimants that extends beyond what the 3 Trust document itself purports to create? 4 A. Yes. 5 Q. And why is that? 6 A. Because they effectively are stepping in 7 the shoes of the trustee by ordering control of 8 the trustee. 9 Q. And since we try and keep this in an 10 orderly fashion, with respect to your reference to 11 their control of the trustee, is it fair that 12 subsequent portions of this report identify the 13 nature and scope of the control that you're just 14 referring to? 15 MR. GIANNOTTO: Objection as to form. 16 You may answer. 17 THE WITNESS: I believe it's all through 18 the report. 19 BY MR. LOCKWOOD: 20 Q. We'll come to that then. 21 In the discussion contained in paragraphs 22 14 through 17 of your report, is it fair to say 23 that you view there's a conflict of interest on 24 the part of TAC because, on the one hand, you view 25 them as having fiduciary obligations to all Trust</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Correct. 2 Q. The TAC purports to have fiduciary duties only to present claimants under the agreement, correct? 3 A. Correct. 4 Q. And the futures representative purports to have only fiduciary duties to the future claimants, correct? 5 A. Correct. 6 Q. Are you saying that that division of 7 responsibility between the TAC and the futures 8 representative in this document is in some manner 9 or another is in consistent with corporate or 10 trust law? 11 A. I don't know. I don't know what the trust 12 law is. 13 Q. Well, okay, let's assume then -- since 14 you're an expert I can ask you hypotheticals. 15 Let's assume the trust law in the context 16 of this kind of a trust. 17 A. Um-hmm. 18 Q. Would permit you to have separate 19 fiduciaries for these two categories of Trust 20 beneficiaries. 21 Is it your opinion that, notwithstanding</p>	<p style="text-align: right;">Page 41</p> <p>1 beneficiaries, and, on the other hand, because 2 they or their law firms represent individual 3 claimants against the Trust, they have a 4 potentially conflicting set of fiduciary duties to 5 the individual claimants that they or their firms 6 represent? 7 A. I think it's more than potentially. 8 Q. Putting aside the word "potentially," that 9 is the conflict between duties to Trust 10 beneficiaries as a whole and duties to individual 11 clients for whom they serve as counsel presenting 12 claims to the Trust. 13 A. Yeah, this is a conflict. 14 Q. Is the nature of the conflict as you see 15 it described in paragraph 16 of your report? 16 A. I believe so. It may be mentioned 17 elsewhere. 18 Q. But this paragraph 16 is sort of the 19 fundamental conflict that you see? 20 MR. GIANNOTTO: Object. Objection as to 21 form. 22 You may answer. 23 THE WITNESS: Again, it may be throughout 24 here, but, yeah, it does talk about it here. 25 BY MR. LOCKWOOD:</p>

<p>Page 82</p> <p>1 could you possibly hypothesize that the trustees 2 would have such an involvement in them that they 3 would be motivated to or could give special 4 treatment to the claims represented by TAC 5 members?</p> <p>6 A. I'd have to look at the details.</p> <p>7 Q. The TAC operates as a multimember group, 8 doesn't it?</p> <p>9 A. I believe so.</p> <p>10 Q. Indeed, we established earlier there were 11 like four members of the TAC, correct?</p> <p>12 A. That's what the documents show, yes.</p> <p>13 Q. And as far as you know, each member of the 14 TAC has their own clients as compared with being 15 shared with other members of the TAC, correct?</p> <p>16 A. The last phrase threw me.</p> <p>17 Q. Well, you don't understand the TAC members 18 to all share the same clients, do you?</p> <p>19 A. I assume not.</p> <p>20 Q. And so to the extent that one TAC member 21 has a client or some clients who, to use your 22 phrase, are putting forth unqualified claims to 23 the Trust to be paid, what incentive do you posit 24 that the other TAC members have to support that 25 such as to cause the trustees to violate their</p>	<p>Page 84</p> <p>1 claims are a little different from my claims and 2 don't have the same deficiencies, you'll agree 3 that I get to submit a different kind of 4 unqualified claim from the one that you're asking 5 for payment on.</p> <p>6 A. I doubt that that specific conversation 7 would take place.</p> <p>8 Q. But what you're saying is the substance of 9 that conduct communicated, however it's 10 communicated, is reasonably possible to take place 11 in your view.</p> <p>12 A. Yes.</p> <p>13 Q. And the basis for that hypothesis is what?</p> <p>14 A. I assume we're talking about human beings, 15 one.</p> <p>16 Two, I assume these folks are in it for 17 money, and if what they do is legal, I think it's 18 just human nature that they do it. There's just 19 too many perverse incentives in this.</p> <p>20 Q. What would make you believe that 21 conspiring among the TAC members to get the 22 trustees to pay unqualified claims under the Trust 23 agreement is, to your phrase, quote, legal, closed 24 quote?</p> <p>25 A. Well, I assume they aren't going to be</p>
<p>Page 83</p> <p>1 fiduciary duties to the claimants as a whole in 2 the processing of those claims?</p> <p>3 A. Again, a long sentence, but, if I 4 understand it, first of all, let me pull out that 5 last phrase, which is what they do with each other 6 may not cause, it may not be a given that would 7 cause the trustee to violate their fiduciary 8 duties as they see it.</p> <p>9 Let's start with the important part, which 10 is what would have them not objecting to each 11 other I think was what you're starting with, which 12 is:</p> <p>13 I don't object to yours, you don't object 14 to mine. That's very human behavior.</p> <p>15 Q. So you posit a situation in which the TAC 16 members as a group sort of conclude that as 17 compared with all the other lawyers out there and 18 the other clients that make up the universe of 19 present claimants that the four TAC members get 20 together, identify among themselves categories of 21 claims that would otherwise be noncompensable 22 under this thing, enter into an agreement that 23 basically says:</p> <p>24 We're going to try and force the trustees 25 to pay these unqualified claims, and if your</p>	<p>Page 85</p> <p>1 violating the law. If there's an incentive there 2 and they take it, and it's written into the 3 documents, the kind of incentives that are here, 4 and they're not violating any law, and if they're 5 not violating the Trust agreement, it's human 6 nature to take those incentives.</p> <p>7 Q. Doesn't your definition of an unqualified 8 claim encompass the notion that the claim is not 9 permissible to be paid under the Trust documents?</p> <p>10 A. It could be a matter of either not 11 permissible or more likely in any of the gray 12 areas in terms of being permissible or is it in, 13 you know, this category or a higher category. 14 Life is not black and white as much as a legal 15 document would purport it to be.</p> <p>16 Q. So you said in a different category, so if 17 a claimant comes in with a claim that only meets 18 the requirements for let's say Category 2 claims 19 and his lawyer conspires with the other TAC 20 members to try and compel the trustees to treat it 21 as a Category 3 claim, that's not violating the 22 Trust agreement.</p> <p>23 A. Because I suspect, given the number of 24 these that are coming in, there's going to be 25 quite a few of them that aren't clearly -- it's</p>

<p style="text-align: right;">Page 86</p> <p>1 probably 2 1/2 versus a 3. Could it be a 2, could 2 it be a 3 therefore? Which way do we round? 3 Q. And the decision of this by the trustees 4 is going to be implemented by saying that this 5 intermediate category for the clients of TAC 6 member X will be paid, but the same intermediate 7 category for everybody else won't be paid.</p> <p>8 A. I'm just saying that the incentive is to 9 pay certain ones and not others.</p> <p>10 Q. I hate to sound like a broken record, but 11 I thought we had agreed earlier that incentive had 12 to be coupled with opportunity before bad things 13 could happen, isn't that true?</p> <p>14 A. Yes.</p> <p>15 Q. And I'm asking you do you know of anything 16 in this Trust document that presents the 17 opportunity for the TAC members to do this middle 18 category gets bumped up for my claims but left 19 down at the lower category for everybody else's 20 claims that you just posited in a previous answer?</p> <p>21 A. Well, it's everything from that, you know, 22 they can influence what medical evidence is 23 needed, they can influence anything for the 24 proof-of-claim forms, the kind of things that I've 25 got throughout my report.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. So in that facility, you, as a trustee, 2 were personally and directly involved with the 3 resolution of the claim that was being considered; 4 is that correct?</p> <p>5 A. Well, there were intermediaries. We were 6 the final decider.</p> <p>7 Q. Are you aware of anything in this trust 8 agreement that creates a structure under which the 9 trustees would be the final decider of individual 10 claim resolution similar to what you just 11 described?</p> <p>12 A. Their decisions could certainly affect 13 that, yes.</p> <p>14 Q. Decisions about individual claims or 15 decisions about broad categories of claims?</p> <p>16 A. But by the decisions of the individual 17 claims can affect the -- the broad category rather 18 can influence the individual.</p> <p>19 Q. So what you're saying is that if a TAC 20 member had some individual claims that might not 21 qualify, that would motivate him to get the 22 trustees to amend the document in some way or 23 another so that all claims of that sort would get 24 better treatment as opposed to just his own 25 specific clients' claims.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. But the medical evidence and the 2 proof-of-claim forms apply to all present 3 claimants, don't they?</p> <p>4 A. True, but they have their forms that they 5 use, and they're saying: 6 Well, you didn't use the right form.</p> <p>7 Q. Do you have any experience about claims 8 resolution at all in terms of the forms and 9 proof-of-claims and processing?</p> <p>10 A. For bankruptcy, yes.</p> <p>11 Q. No, no, no. For asbestos trusts.</p> <p>12 A. I'm sorry. No.</p> <p>13 Q. For any kind of trust?</p> <p>14 A. Yes, but not for asbestos.</p> <p>15 Q. Okay. What kind of trusts do you have 16 personal experience with observing the processing 17 of tort claims?</p> <p>18 A. Probably the closest that I've had is when 19 I was on the board, pension board for a steel 20 company where we had all these disability claims 21 that came in.</p> <p>22 Q. And your experience with that was that --</p> <p>23 A. It was incredibly gray areas. We debated 24 forever as to whether or not the person really was 25 disabled or not.</p>	<p style="text-align: right;">Page 89</p> <p>1 A. If I understand the hypothetical, yes.</p> <p>2 Q. And the trustees would not -- well, and 3 the trustees would not pass on that proposal using 4 their own fiduciary judgment, but, rather, they 5 would be influenced to come up with a different 6 result because of the control and influence that 7 you say the TAC members have over the trustees in 8 the various ways you identify in your report?</p> <p>9 A. It could happen.</p> <p>10 MR. GIANNOTTO: Do you want lunch?</p> <p>11 MR. LOCKWOOD: Yeah. How about if we take 12 a lunch break.</p> <p>13 MR. GIANNOTTO: How long of a break for 14 the people on the phone so they know?</p> <p>15 We're off the record by the way. (Whereupon a discussion was had off the record.)</p> <p>18 (Whereupon a recess was had from 19 1:06 p.m. to 1:55 p.m.)</p> <p>20 MR. LOCKWOOD: Folks on the phone?</p> <p>21 MS. ORR: I'm ready.</p> <p>22 MR. LOCKWOOD: Okay. We're about to get 23 restarted here.</p> <p>24 A MALE TELEPHONE VOICE: Sure.</p> <p>25 BY MR. LOCKWOOD:</p>

<p>Page 94</p> <p>1 between the individual interests of a member of a 2 group and the collective interest of the member of the group can't be eliminated as a practical 3 matter?</p> <p>4 A. Well, it's probably never eliminated. The 5 question is is are there mechanisms or ways you 6 could deal with it.</p> <p>7 Q. Well, here I take it the way you would 8 propose to deal with the conflicts you've 9 identified here is by preventing personal injury 10 lawyers who help asbestos claimants from being 11 members of a TAC?</p> <p>12 A. That's probably the cleanest way.</p> <p>13 Q. What is your understanding of the function 14 of a TAC in a case like this?</p> <p>15 A. The things that are set out in the 16 documents.</p> <p>17 Q. But why not just have a trust with 18 trustees and no TAC and no futures representative?</p> <p>19 A. I think you could have a TAC, and you can 20 have a futures representative. The point is to 21 eliminate the conflicts, not to eliminate the 22 positions.</p> <p>23 Q. Well, what I'm asking you is what your 24 understanding of the rationale, if you will, is</p>	<p>1 and evaluation of asbestos personal injury cases 2 in the state tort systems?</p> <p>3 A. Because I think they can come up to speed 4 very fast.</p> <p>5 Q. Let's break it down a little bit.</p> <p>6 Putting aside for a moment the learning 7 curve on law professors who have never practiced 8 as a litigator in a tort case in a tort system.</p> <p>9 A. I'm not talking about law professors. I'm 10 talking about business professors.</p> <p>11 Q. Oh, business professors. Better yet. Who 12 aren't even lawyers.</p> <p>13 A. That aren't even lawyers.</p> <p>14 Q. And putting aside the learning curve for 15 those folks?</p> <p>16 A. Um-hmm.</p> <p>17 Q. If we ignore what you identified as the 18 conflict problems and just sort of focus solely on 19 who would be the most capable, informed, qualified 20 person to represent the interests of personal 21 injury claimants against a trust that's supposed 22 to be liquidating and valuing their claims, would 23 you actually say that your hypothetical, a smart 24 business professor, would be preferable to a 25 hypothetical equally smart personal injury lawyer?</p>
<p>Page 95</p> <p>1 for having a TAC and a futures rep to look over 2 the shoulder of trustees in the first place is.</p> <p>3 A. Because there's two different groups who 4 can take from that trust, and you're effectively I 5 assume putting on representative of the two most 6 important groups.</p> <p>7 Q. So if you accepted the notion that you 8 just expressed, then are you saying that when you 9 select people to represent the interests of 10 present claimants, it would be the conflicts that 11 you have identified are so severe that you would 12 be better off picking people that have no 13 involvement in or experience of asbestos tort 14 litigation on the TAC in preference to people that 15 do.</p> <p>16 A. If they don't have the -- if that's the 17 only way to get rid of a conflict, but I'm sure 18 there's other qualified smart people who can get 19 up to speed fast.</p> <p>20 Q. Do you think you would be a good TAC 21 member?</p> <p>22 A. I'd probably randomly choose quite a few 23 of my fellow professors to be good TAC members.</p> <p>24 Q. And that's because you know all sorts of 25 professors that are familiar with the prosecution</p>	<p>Page 97</p> <p>1 A. If it was a personal injury lawyer who had 2 nothing to do with any claimants in this case, 3 then I could go with that.</p> <p>4 Q. So it's a trade-off.</p> <p>5 The experience or expertise of the 6 asbestos personal injury claimants in dealing with 7 claims resolution which includes settlements and 8 litigation and what have you on the one hand, and 9 the conflict if you will between their interests 10 in the collective and their interests in 11 individual claimants. Is that fair?</p> <p>12 THE WITNESS: Want to read that one back 13 to me?</p> <p>14 (Whereupon the record was read as 15 requested.)</p> <p>16 THE WITNESS: Could you rephrase that?</p> <p>17 BY MR. LOCKWOOD:</p> <p>18 Q. Well, what I'm positing is there's a 19 reason to have asbestos plaintiffs' lawyers on the 20 committee because of knowledge and experience, and 21 there's a reason that you posit not to have them 22 on there, and if you don't put them on there 23 because of the conflicts, then you lose the 24 knowledge and the experience, and that's what I 25 characterize as is that a trade-off. You can't</p>

<p style="text-align: right;">Page 146</p> <p>1 MR. GIANNOTTO: Is that not on the report? 2 THE WITNESS: No. 3 BY MR. SMITH: 4 Q. What was the date of your law degree? 5 A. Law degree was 1997. 6 Q. Okay. And after you graduated from law 7 school, you immediately started working at 8 McDermott, Will & Emery; is that right? 9 A. Yes, as counsel. 10 Q. And would the opinions you're giving in 11 this case be similar to the type of work you did 12 at McDermott? 13 A. Not really. 14 Q. Okay. And your business school degree 15 before that, do you have any recollection of about 16 when that was? 17 A. Sounds like it was more -- longer than it 18 was. 19 Q. I didn't mean this to be a difficult 20 exam-type question. 21 A. I got the, let's see, my undergrad was 22 '64, my MBA was '66 and my doctorate was '68. 23 That's 19, not 18. 24 Q. Okay. And before you were teaching as a 25 professor at Northwestern, you were listed as an</p>	<p style="text-align: right;">Page 148</p> <p>1 lawyers in this case before? 2 A. No. 3 Q. Okay. How did you get retained in the 4 case? 5 A. Mr. Giannotto called me. 6 Q. Okay. How did he find out about you? 7 MR. GIANNOTTO: Objection, lack of 8 foundation. 9 THE WITNESS: I have no idea. 10 BY MR. SMITH: 11 Q. Okay. You list some documents that you've 12 considered, such as the Trust agreement and things 13 like that in your report. Who provided you with 14 those documents? 15 A. I think I got some on-line or -- and then 16 I asked Mr. Giannotto to send me copies. 17 Q. Okay. Were the majority of the documents 18 you've relied on provided by the lawyers in this 19 case? 20 A. I think so, yes. 21 Q. Okay. And in order to render your 22 opinions in this case, is it fair to say that you 23 had to interpret various legal documents that are 24 at issue in the case? 25 A. I guess "interpret" is the right word.</p>
<p style="text-align: right;">Page 147</p> <p>1 adjunct professor; is that correct? 2 A. That's right. 3 Q. What's the distinction in the type of 4 position you have now? 5 A. One's part time, one's full time. 6 Q. Okay. And how did it come about that you 7 were teaching full time? 8 A. I was asked to. 9 Q. Okay. Are you a tenured track professor? 10 A. No. 11 Q. Okay. There's no possibility you could be 12 eligible for tenure? 13 A. There is if I'm willing to undertake a 14 tremendous part of my life in researching. 15 Q. Okay. But you don't have tenure and 16 you're not willing to undertake the research to 17 get tenure; is that right? 18 A. That's correct. 19 Q. And the Loyola law degree, were you 20 working full time while you were getting that? 21 A. No. 22 Q. Okay. Were you in law school full time at 23 that time? 24 A. Yes, but I was working part time. 25 Q. Have you ever worked for any of the</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Okay. And, in addition, in order to 2 render your opinions in this case, you had to 3 interpret various rules and statutory provisions 4 you cite in your report; is that right? 5 A. Right. Well, wait. Wait. You know, when 6 you say I had to -- use your words again. 7 Q. Well, why don't I ask another question. 8 Is it fair to say that ultimately these 9 Plan documents, the Trust documents will be 10 interpreted by the Court. Is that fair to say? 11 A. Everything's going to get interpreted by 12 the Court. 13 Q. Okay. And the Court may disagree with the 14 interpretations that you've given to the 15 documents, right? 16 A. Well, I hope the Court sees them in a new 17 light from a business and behavioral standpoint 18 instead of just a legal standpoint because all 19 these documents may be perfectly legal -- 20 Q. That's not what I'm asking. I was sitting 21 here today, and I heard, would it be fair to say, 22 there were a lot of disagreements about 23 interpretation of the documents between yourself 24 and Mr. Lockwood. Would that be fair to say? 25 A. I think the disagreement wasn't an</p>

<p>Page 154</p> <p>1 it.</p> <p>2 THE WITNESS: As best as I understand the</p> <p>3 question, the Court is probably going to rule on</p> <p>4 the legality.</p> <p>5 BY MR. SMITH:</p> <p>6 Q. Okay.</p> <p>7 A. I am asking the Court to look at:</p> <p>8 Wait a minute. You got to look past the</p> <p>9 legality sometimes and see what the impact of any</p> <p>10 perverse incentives are that may be legal, but,</p> <p>11 really, under good governance practices shouldn't</p> <p>12 be allowed to go on.</p> <p>13 Q. Okay. So you agree with me that the</p> <p>14 Court's going to make determinations regarding</p> <p>15 interpretation of the documents you've relied on,</p> <p>16 right?</p> <p>17 A. The Court will interpret the legality of</p> <p>18 those documents.</p> <p>19 Q. Okay. And also the Court's going to</p> <p>20 interpret what those documents mean, is that fair?</p> <p>21 A. From a legal standpoint, yes.</p> <p>22 Q. Okay. Now, you're not holding yourself</p> <p>23 out as an expert on a medical expert on asbestos</p> <p>24 disease, right?</p> <p>25 A. That's correct.</p>	<p>Page 156</p> <p>1 If you can understand it, answer it.</p> <p>2 THE WITNESS: I'm not interpreting</p> <p>3 anything.</p> <p>4 What I'm saying is I read these documents</p> <p>5 and I say:</p> <p>6 This is the mischief it could cause.</p> <p>7 BY MR. SMITH:</p> <p>8 Q. Okay. So you're not holding yourself out</p> <p>9 as an expert on the interpretation of legal</p> <p>10 documents, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay.</p> <p>13 A. If I understand your question.</p> <p>14 Q. Now, you're not a psychologist, correct?</p> <p>15 A. I have a Ph.D. in organizational behavior,</p> <p>16 which we had to get into a lot of psychology and</p> <p>17 sociology under a business setting.</p> <p>18 Q. Okay. Are you holding yourself out as an</p> <p>19 expert in psychology?</p> <p>20 A. Only as that part of the motivational part</p> <p>21 in a business setting.</p> <p>22 Q. Have you ever done any empirical research</p> <p>23 where you've collected data from subjects</p> <p>24 regarding human behavior?</p> <p>25 A. Yes.</p>
<p>Page 155</p> <p>1 Q. And you're not an expert on what claims</p> <p>2 have merit or don't have merit?</p> <p>3 A. That's correct.</p> <p>4 Q. And you're not an expert on medical</p> <p>5 criteria that might be used in paying claims.</p> <p>6 A. No.</p> <p>7 Q. And you're not I suppose holding yourself</p> <p>8 out as an expert on the interpretation of legal</p> <p>9 documents.</p> <p>10 MR. GIANNOTTO: I'm going to object. I</p> <p>11 don't even know what that means.</p> <p>12 Each of these documents are legal</p> <p>13 document, and he's read them and said what he</p> <p>14 thinks they said. If the point you're making --</p> <p>15 MR. SMITH: You're making a speaking</p> <p>16 objection.</p> <p>17 MR. GIANNOTTO: I understand because we</p> <p>18 can't understand what you're talking about.</p> <p>19 MR. SMITH: He didn't say that. You said</p> <p>20 that.</p> <p>21 BY MR. SMITH:</p> <p>22 Q. Are you holding yourself out as an expert</p> <p>23 on this case on interpretation of legal documents?</p> <p>24 MR. GIANNOTTO: And I'm going to object</p> <p>25 because that question makes no sense.</p>	<p>Page 157</p> <p>1 Q. What was that?</p> <p>2 A. For my dissertation.</p> <p>3 Q. And since your dissertation have you ever</p> <p>4 done any empirical research on human behavior?</p> <p>5 A. No, having read substantial amounts.</p> <p>6 Q. Have you ever published any research on</p> <p>7 human behavior in a peer review publication?</p> <p>8 A. No.</p> <p>9 Q. You've never held yourself out as an</p> <p>10 expert in litigation on Trust procedures, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you've never held yourself out as an</p> <p>13 expert in litigation on trust governance, correct?</p> <p>14 MR. GIANNOTTO: I'm going to object. I</p> <p>15 don't know what "litigation on trust governance"</p> <p>16 as opposed to "trust governance" means.</p> <p>17 BY MR. SMITH:</p> <p>18 Q. In a lawsuit have you ever held yourself</p> <p>19 out as an expert on trust governance before?</p> <p>20 A. No.</p> <p>21 MR. GIANNOTTO: Wait, wait, wait, wait.</p> <p>22 I'm going to object to that. He already testified</p> <p>23 that he --</p> <p>24 MR. SMITH: You're telling us what his</p> <p>25 testimony is, not objecting.</p>